



Comptroller General  
of the United States

Washington, D.C. 20548

Spiegel  
143727

## Decision

**Matter of:** Lebanon Publishing Company, Inc.

**File:** B-243149

**Date:** April 24, 1991

G. Stanley Moore, Esq., for the protester.  
Kerry L. Miller, Esq., United States Government Printing Office, for the agency.  
Robert A. Spiegel, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

The General Accounting Office will not review a procuring agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith, or the misapplication of a definitive responsibility criterion; a performance requirement that certain paper be used in printing a newsletter is not such a criterion.

### DECISION

Lebanon Publishing Company, Inc. protests the rejection of its bid and the award to The Daily Guide, by the United States Government Printing Office (GPO), under Program 1652-S, for the printing of a newsletter. Lebanon contends that the prospective awardee will not comply with the specification requirement regarding the type of paper to be used in printing the newsletter. Lebanon also alleges that GPO improperly refused the protester permission to correct a clerical error in its bid.

We dismiss the protest.

The program solicitation was issued to 20 firms on December 10, 1990, requesting sealed bids. GPO received four bids by the time of bid opening on January 10, 1991. The Daily Guide submitted the apparent low bid, \$10,125.11; the Sedalia Democrat submitted the second low bid, \$17,276.20; and Lebanon submitted the third low bid, \$17,800.88. Shortly after bid opening, Lebanon contacted the contracting officer about an alleged clerical error in its bid price. Lebanon asserted that one item was priced at \$312 instead of \$3.12 on account of a misplacement of a decimal point. Lebanon requested permission to correct the alleged clerical error,

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which would make its bid \$13,175.68, the second low bid. GPO declined to permit the correction and award was made to The Daily Guide on February 15. On March 1, Lebanon filed this protest with our Office.

Lebanon alleges that The Daily Guide does not intend to furnish paper that meets contract specifications. This is essentially an argument that the low bidder is not a responsible bidder. A determination as to whether a prospective awardee is capable of performing a contract is based largely on subjective judgments, which generally are not susceptible to reasoned review. Thus, we will not review a contracting officer's affirmative determination of a contractor's responsibility absent a showing of possible fraud or bad faith on the part of the procuring officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1991); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Here, there are no allegations of fraud or bad faith.

Lebanon argues that the requirement that the newsletter be printed on "[a] good commercial grade of white newsprint (Hi-Brite or equal) . . ." is a definitive responsibility criterion, which The Daily Guide will not meet. A definitive responsibility criterion is defined as a specific objective standard that has been established by a procuring agency in a solicitation to measure a bidder's ability to perform a contract. Calculus, Inc., B-228377.2, Dec. 7, 1987, 87-2 CPD ¶ 558; Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. The newsprint quality provision referenced by Lebanon is a performance requirement in the specifications-- not a definitive responsibility criterion. See Victaulic Co. of Am., B-217129, May 6, 1985, 85-1 CPD ¶ 500. Therefore, we dismiss this protest issue.

We will not consider Lebanon's contention that GPO erred in not allowing correction of its alleged mistake in bid, since Lebanon would not be in line for award even if correction were permitted. Thus, we regard this protest issue as academic, since it has no practical consequence with regard to this procurement.

The protest is dismissed.



James A. Spangenberg  
Assistant General Counsel